



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|-----------------------|------------------------------|------------------|
| 10/768,308 | 01/30/2004 | Richard Wayne Buskens | LUC-450/Buskens 6-1-1-1-2 | 6327 |
| 32205 | 7590 | 01/05/2010 | EXAMINER | |
| Carmen Patti Law Group, LLC ONE N. LASALLE STREET 44TH FLOOR CHICAGO, IL 60602 | | | | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2191 | |
| | | | MAIL DATE | DELIVERY MODE |
| | | | 01/05/2010 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/768,308

Applicant(s)

BUSKENS ET AL.

Examiner

PHILIP WANG

Art Unit

2191

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI.08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Detail Action

1. This office action is in response to the RCE filed on 10/19/2009.
2. Per Applicant's request, claims 1, 7, 16, and 21-22 are amended.
3. Claims 1-9, and 11-22 are pending.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-9, 11-15, 21 and 22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-15, 21 and 22 recites a computer-readable signal-bearing media. A computer-readable signal-bearing medium can be interpreted as signal. Signal is considered as a form of energy and is not considered a patentable subject matter.

The amended claims include the limitation of a computer-readable signal-bearing medium comprising a list of items; however the term computer-readable signal-bearing medium can be subject matters other than those items in the list. Use of the term "comprises" does not limit the scope of the claim to include only items listed. A computer-readable signal-bearing medium can be signal or wave (for example, modulated wave) that is computer-readable. As reasoned

above, signal or wave is considered a form of energy and is not considered a patentable subject matter.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-9, 11-22 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-9, and 11-22 recite the limitation of a legacy management system. According to the Applicant's remark, page 9, 1st paragraph, "...the legacy management system may refer to an old or outdated management system..." According to the definition provided in the remark, a legacy management system can be interpreted as an outdated management system. There is a question regarding the precise definition of what is being considered as outdated management system. Is a one-year-old manage system considered outdated or a three-months-old management system considered outdated? Is a management system installed yesterday considered outdated? Even with Applicant's another definition a legacy system – "does not work well with up-to-date systems". Similar questions can be asked of what is the precise definition of "does not work well". Does "does not work well" means does not work 70% of the time or does not work 50% of the time? It is for these reasons the examiner consider the scope of the claims indefinite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 16, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Baughman (US Patent No. 6,408, 399).

As per claim 1, 16 and 21,

- **a first manager component of a legacy management system that performs one or more first management operations on a software and/or hardware entity; and a second manager component that performs one or more second management operations on the software and/or hardware entity, wherein the second manager component comprise high availability services system software operating in a high availability domain; wherein the first manager component and the second manager component are configured to concurrently share management responsibilities for the software and/or hardware entity; wherein the first manager component and the second manager component are configured for individual management**

responsibilities. (c4: 45-65, FIG. 3, "...a disk manager 107 and 117 resides on each computer 10 and 11 to manage file manipulation of the shared disks 12 and 13..." where 10 is the first manager, 11 is the second manager. The system of Fig. 3 is in high-availability domain. The examiner considers the first manager can be at least one day old and therefore a legacy management system of at least one day old. The examiner considers a one day old system is considered as outdated as compared to today.).

7. Claims 1-9, 11-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson (USPGPub. No. 2003/0058796).

As per claim 1, 16, and 21, Anderson discloses

- a first manager component that performs one or more first management operations on a software and/or hardware entity; and a second manager component that performs one or more second management operations on the software and/or hardware entity; wherein the first manager component and the second manager component are configured for individual management

- responsibilities** ([0018], for example, line 12-15, "...a traffic manager, a provisioning manager and a signaling manager perform all broadband and narrowband...and connections for all network devices." In this scenario, the first manager component can be a traffic manager/signaling manager; and the second manager component can be a provisioning manager; and the software and/or hardware entity is the network devices. See also, FIG. 2; [0032], "...The core packet network and the physical network are managed and controlled by the signaling manager 16, the provisioning manager 18 and the traffic manager 20..."; [0068], "...The provisioning manager 18 is equipped with a redundant server for high availability..." where 16, 18 and 20 have their individual management responsibilities. See Figure 2, in one embodiment, signaling manager 16 is the first management component and provisioning manager is the second management component. Signaling manager has its individual management responsibility of controlling signals and provisioning manager has its individual management responsibility of provisioning the network.) .
- Wherein the first manager component and the second manager component are configured to concurrently share management responsibilities for the software and/or hardware entity (in this scenario the first manager

component and the second manager component function concurrently to share management responsibility).

As per claim 2,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the first manager component and the second manager component are communicatively coupled ([0019], for example, "The signaling manager receives its working instructions from the traffic manage and from the provisioning manager...").

As per claim 3,

the rejection of claim 2 is incorporated;

further Anderson discloses

- the first manager component and the second manager component coordinate the one or more first and second management operations to occur in a proper sequence ([0019], for example, "The signaling manager receives its working instructions from the traffic manage and from the provisioning manager..."; [0033],

"...decide how to configure the logical networks on top of the physical network resources...").

As per claim 4,
the rejection of claim 1 is incorporated;
further Anderson discloses

- upon detection by the first management component of an event associated with the software and/or hardware entity, the first manager component sends a notification to the second manager component; wherein upon detection by the second management component of an event associated with the software and/or hardware entity, the second manager component sends a notification to the first manager component ([0021], shows monitoring of network event, [0018], [0019], show manager components communicating with each other.).

As per claim 5,
the rejection of claim 1 is incorporated;
further Anderson discloses

- the software and/or hardware entity comprises one or more software and/or hardware components; wherein the first manager component starts up the software and/or hardware entity and the one or more software and/or hardware

components; wherein the first manager component sends a notification to the second manager component to indicate that the software and/or hardware entity and the one or more software and/or hardware components have been started ([0020], for example, "provisioning element for non-real time circuits...performs...end point connections and port provisioning..."; [0018]-[0019]).

As per claim 6,
the rejection of claim 5 is incorporated;
further Anderson discloses

- the second manager component initializes one or more of the one or more software and/or hardware components; wherein the second manager component sends a notification to the first manager component to indicate that the one or more of the one or more software and/or hardware components have been initialized ([0020], for example, "provisioning element for non-real time circuits...performs...end point connections and port provisioning..."; [0018]-[0019]).

As per claim 7,
the rejection of claim 1 is incorporated;

further Anderson discloses

- the software and/or hardware entity comprises one or more software and/or hardware components; wherein the first and second manager components cooperate to initialize, monitor, and detect one or more failures of the software and/or hardware entity and one or more of the one or more software and/or hardware components, wherein the first and second manager components dynamically negotiate the individual management responsibilities. ([0021]) .

As per claim 8,

the rejection of claim 7 is incorporated;

further Anderson discloses

- the first and second manager components cooperate to recover the software and/or hardware entity from the one or more failures ([0068], "...restored quickly in the event hardware failure...").

As per claim 9,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the first manager component sends a request to the second manager component to cause the second manager component to perform a management operation of the one or more second management operations on the software and/or hardware entity ([0019]).

As per claim 11,

the rejection of claim 1 is incorporated;

further Anderson discloses

- in combination with the software and/or hardware entity, wherein the software and/or hardware entity operates outside of the high availability domain, wherein the high availability services software comprised the one or more second management operations; wherein the software and/or hardware entity interacts with the high availability domain([0068], line 2, "...provisioning manager...high availability..." see Figure 2, where provisioning manager employ high availability. Signaling manager 16 can be considered outside the high availability domain of provisioning manager.).

As per claim 12,

the rejection of claim 11 is incorporated;

further Anderson discloses

- the software and/or hardware entity is connected with the high availability domain to employ one or more of the one or more second management operations of the high availability services software ([0068], line 2, "...high availability...", see Fig. 2).

As per claim 13,

the rejection of claim 12 is incorporated;

further Anderson discloses

- the software and/or hardware entity is connected with the first manager component to employ one or more of the one or more first management operations and to prevent autonomous control of the software and/or hardware entity by the high availability services software ([0068], line 2, "...high availability..."; [0055], "The signaling manger has call exclusion rules for QoS rules on connections...", see Fig. 2, provisioning manager and signaling manager work together to accomplish provisioning the network. Therefore, there is no autonomous control.).

As per claim 14,

the rejection of claim 1 is incorporated;

Anderson discloses

- in combination with the software and/or hardware entity, wherein the first manager component, the second manager component, and the software and/or hardware entity are responsible for one or more of setup and teardown of telecommunication connections ([0060], "...creating...and tearing down connections...").

As per claim 15,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the software and/or hardware entity comprises one or more first software and/or hardware components and one or more second software and/or hardware components; wherein the first manager component controls the one or more first software and/or hardware components; wherein the second manager component controls the one or more second software and/or hardware components ([0018], for example, line 12-15, "...a traffic manager, a provisioning manager and a signaling manager perform all broadband and narrowband...and connections for all network devices." In this scenario, the first manager component can be a traffic manager/signaling manager; and the second manager component can be a provisioning manager; and the software and/or hardware entity is

the network devices.).

As per claim 17,

the rejection of claim 16 is incorporated;

further Anderson discloses

- allowing the software and/or hardware entity to accept one or more first management operations from the first manager component and one or more second management operations from the second manger component, wherein the first and second manager components cooperate to initialize, monitor, and detect failures of the software and/or hardware entity ([0018], for example, line 12-15, "...a traffic manager, a provisioning manager and a signaling manager perform all broadband and narrowband...and connections for all network devices.", [0021], "...monitoring..."; [0058], "...provisioning..."; The examiner asserts that monitoring detect failures.)

As per claim 18,

the rejection of claim 16 is incorporated;

further Anderson disclose

- wherein the second manager component comprises high availability services software operating in a high availability domain, the method further comprising the steps of: operating the software and/or hardware entity outside of the high availability domain; and connecting the software and/or hardware entity with the high availability services software within the high availability domain ([0068], line 2, "...high availability...").

As per claim 19,

the rejection of claim 16 is incorporated;

further Anderson disclose

- sending one or more notifications between the first manager component and the second manager component to indicate occurrence of one or more events associated with the software and/or hardware entity ([0018], [0019]).

As per claim 20,

the rejection of claim 16 is incorporated;

further Anderson disclose

- wherein the software and/or hardware entity comprises one or more first software and/or hardware components, wherein the step of configuring the software and/or hardware entity for partial control by the first manager component and partial control by the second manager component comprises the steps of: connecting the one or more first software and/or hardware components with the first manager component to employ one or more first management operations of the first

manager component; and connecting the one or more second software and/or hardware components with the second manager component to employ one or more second management operations of the second manager component and to prevent autonomous control of the software and/or hardware entity by the first manager component ([0018], for example, line 12-15, "...a traffic manager, a provisioning manager and a signaling manager perform all broadband and narrowband...and connections for all network devices."; [0068], line 2, "...high availability...").

As per claim 22,

Anderson discloses

- first manager component and/or the second manager component access a configuration file to determine the individual management responsibilities of each of the first and second manager components ([0074]).

Response to Arguments

In the remark,

1) Applicant argues –

Signal-bearing media is statutory.

1) Examiner's response –

Please refer to rejection in this office action where a signal-bearing media can be a modulated wave that carries signal. A modulated wave is a media that bears signal. Therefore, a signal-bearing media can be interpreted as wave.

2) Applicant argues –

The term legacy management system is definite.

2) Examiner's response --

Please refer to the new 35 U.S.C. 112 of claims 1-9, 11-22 above. The Applicant recites various patent or publication using the term 'legacy'. A term as commonly used in English does not necessarily renders it definite. For example, "such as", is a commonly used term, however it does not render it definite when used in a claim. The examiner acknowledges that 'legacy' is commonly used in English, however, when used in patent claims; it does not necessarily render it definite. A term as used in patent claims need be precise. The examiner consider 'legacy management system' does not a precise meaning as set forth in the rejections.

3) Applicant argues –

Baughman does not support the limitation of concurrently share management responsibility.

3) Examiner's response –

As the Applicant acknowledges, one page 11, 2nd paragraph of the remark, "...the active standby components...fulfill a cooperating configuration". The examiner considers a cooperating configuration is one scenario of concurrently sharing management responsibility. The examiner considered the claim language as presented does not reasonable distinguish the scope of the claim with the recited prior art.

4) Applicant argues –

Anderson fails to make any mention of a "sequence".

4) Examiner's response –

Per Applicant's recitation on last paragraph of page 12 of the remark, "...configure the logical network on top of the physical network..." teaches that in order to properly configure a network, physical network needs to be configured first before a logical network can be configured in this sequence.

5) Applicant argues – per claim 7

Traffic loading is not a management responsibility.

5) Examiner's response –

The examiner considers traffic loading comprises at least starting or initializing a traffic load.

6) Applicant argues –

Applicant requested more detail for reasons for rejections of claims 11-12.

6) Examiner's response --

More detailed reason is provided. See rejections of respective claims.

7) Applicant argues –

Anderson fails to disclose any of the signaling managers, the traffic manager, and provisioning manager are legacy system.

7) Examiner's response –

The examiner considers these systems can be at least one day old. Therefore, it is outdated as compared with today's system. Therefore, are considered legacy management systems of at least yesterday as compared with management systems installed today.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Wang whose telephone number is 571-272-5934. The examiner can normally be reached on Mon - Fri 8:00AM - 4:00PM. Any inquiry of general

nature or relating to the status of this application should be directed to the TC2100 Group receptionist: 571-272-2100.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Zhen can be reached on 571-272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Philip R. Wang/ 1/2/2010

Patent Examiner